

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCELL T. HENDRIX,

Plaintiff,

v.

CALIFORNIA DEPT. OF CORR. AND  
REHAB., et al.,

Defendants.

No. 2:22-cv-1319 TLN CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil action. On March 7, 2023, plaintiff's amended complaint was dismissed with leave to file a second amended complaint. Plaintiff has now filed a second amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

As in plaintiff's original and amended complaints, plaintiff seeks damages for injuries sustained by him on August 1, 2021, when he fell while trying to climb to a top bunk and for injuries to a finger sustained on August 15, 2021, when plaintiff attempted to close the door to his cell. Both incidents occurred at the California Health Care Facility (CHCF) in Stockton.

1 Plaintiff seeks relief under the Americans with Disabilities Act, 42 U.S.C § 12101 et seq,  
2 but he does not allege that he has any qualifying disability. He simply alleges that he was injured  
3 as the result of conditions of confinement.

4 Plaintiff also asserts a claim under the Eighth Amendment. In order to adequately allege a  
5 claim for harmful conditions of confinement under the Eighth Amendment, plaintiff must point to  
6 facts indicating he sustained injury as the result of a prison official's deliberate indifference to a  
7 substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 834, 837 (1994). As in his  
8 original and amended complaints, plaintiff fails to allege any prison official was at least  
9 deliberately indifferent to a substantial risk of serious harm.

10 For these reasons, the court will recommend that plaintiff's second amended complaint be  
11 dismissed. Since it appears plaintiff cannot, in good faith, state a claim upon which relief can be  
12 granted with respect to injuries sustained on August 1 and 15, 2021, the court will not grant leave  
13 to amend a third time.

14 In accordance with the above, IT IS HEREBY RECOMMENDED that:

15 1. Plaintiff's second amended complaint be dismissed for failure to state a claim upon  
16 which relief can be granted; and

17 2. This case be closed.

18 These findings and recommendations are submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
20 after being served with these findings and recommendations, plaintiff may file written objections  
21 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
22 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
23 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
24 (9th Cir. 1991).

25 Dated: August 28, 2023

26   
27 CAROLYN K. DELANEY  
28 UNITED STATES MAGISTRATE JUDGE